

## CHAPTER Env-Wt 900 STREAM CROSSINGS

### PART Env-Wt 901 PURPOSE AND APPLICABILITY

Env-Wt 901.01 Purpose. The purpose of this chapter is to:

- (a) Enhance public safety by establishing standards for necessary stream crossings that are designed to lessen the risk of blockages and wash-outs of culverts and bridges, and the associated flooding, which can jeopardize property and human lives upstream and downstream of such crossings and on roadways; and
- (b) Preserve the functions and values of existing streams, support the restoration of impacted streams to their natural state, and improve aquatic life passage and sediment transport, while recognizing that well-managed forest management activities, normal agricultural operations, and trail activities play important roles in protecting water quality.

Env-Wt 901.02 Applicability.

- (a) Unless exempted under Env-Wt 901.03, all crossings of perennial streams and intermittent streams shall be subject to Env-Wt 903 and Env-Wt 904.
- (b) The rules in this chapter shall not apply to crossings of drainage swales or ephemeral streams, or to any crossings located upstream of where the scouring starts for an intermittent stream or perennial stream.

Env-Wt 901.03 Exemptions. The following shall be exempt from Env-Wt 903 and Env-Wt 904:

- (a) Routine roadway and railway maintenance activities conducted in accordance with Env-Wt 303.05(q);
- (b) Minimum impact projects to allow vehicular access to a piece of property for forest management activities, conducted in accordance with:
  - (1) Env-Wt 303.04(e) for roadway construction through forested wetlands; or
  - (2) Env-Wt 303.04(g) for installation of a structure and associated fill to cross wetlands, including streams;
- (c) Minimum impact agricultural activities conducted in accordance with Env-Wt 303.04(u);
- (d) Minimum impact trail activities conducted in accordance with Env-Wt 303.04(y); and
- (e) Minimum impact stream crossings for access to a property for a single-family residential property or building lot, for noncommercial recreational purposes including conservation projects, or for normal agricultural operations, conducted in accordance with Env-Wt 303.04(z) or (ag).

### PART Env-Wt 902 DEFINITIONS

Env-Wt 902.01 “Aggradation” means the raising of the grade or level of the bed of a watercourse by the deposition of detritus, sediment, or other material.

Env-Wt 902.02 “Aquatic life” means plant and animal species whose life-cycle depends, in whole or in part, on fresh water, salt water, or both. The term includes fish, amphibians, reptiles, and macroinvertebrates. The term does not include any exotic aquatic weed as defined in RSA 487:16, II.

Env-Wt 902.03 “Bankfull flow” means the volume of flow in a watercourse at which water begins to overflow into the active floodplain.

Env-Wt 902.04 “Bankfull width” means the width of the wetted channel during bankfull flow.

Env-Wt 902.05 “Closed culvert” means a culvert that is solid at the top, along its sides, and across its lower edge, such that its cross-section is continuous. A closed culvert can be square, rectangular, circular, or oval in cross-section.

Env-Wt 902.06 “Connectivity” means the state in which upstream and downstream reaches of a watercourse meet in a geomorphically stable situation that does not adversely affect the movement of aquatic life or the transport of sediment.

Env-Wt 902.07 “Designated river” means “designated river” as defined in RSA 483:4, VIII.

Env-Wt 902.08 “Designated river corridor” means the river corridor of a designated river.

Env-Wt 902.09 “Embedded” means, when referring to a stream crossing structure, buried within the stream bed to such an extent that water depths and velocities at a variety of flows within the crossing structure are comparable to those found in the natural channel upstream and downstream of the stream crossing structure.

Env-Wt 902.10 “Existing legal crossing” means a stream crossing for which:

(a) All applicable federal, state, and local requirements were met when the crossing was originally installed; and

(b) If the crossing was modified, repaired, or reconstructed subsequent to its original installation, the work, when undertaken, met all applicable federal, state, and local requirements.

Env-Wt 902.11 “Forest management activities” means activities necessary for forest management as defined in RSA 227-G:2, IX, including but not limited to extracting timber, planting and replanting of various species, and cutting roads and pathways through forests, provided such activities are undertaken in compliance with applicable statutes and rules, including RSA 227-J, and best management practices.

Env-Wt 902.12 “Normal agricultural operations” means activities as described in RSA 21:34-a, including the construction or maintenance of farm roads.

Env-Wt 902.13 “Open-bottom culvert” means a culvert whose sides do not meet at its lower edge.

Env-Wt 902.14 “Permanent crossing” means a crossing that is intended to remain in place for 2 years or more after installation, regardless of the purpose for its installation.

Env-Wt 902.15 “Pipe arch” means a culvert that has rounded sides and a rounded top with a flat bottom.

Env-Wt 902.16 “River corridor” means “river corridor” as defined RSA 483:4, XVIII.

Env-Wt 902.17 “Span structure” means a structure that crosses from the top of one bank to the top of the opposite bank, such that it does not disturb the stream channel or its banks.

Env-Wt 902.18 “Stream channel” means a channel that carries the bankfull flow.

Env-Wt 902.19 “Stream enhancement” means stream rehabilitation activities undertaken to improve water quality or ecological function of a watercourse that do not qualify as total stream restoration, including but not limited to in-stream or stream bank stabilization activities that restore one or more of the geomorphic variables such as dimension, pattern, and profile.

Env-Wt 902.20 “Stream simulation” means a method of designing and constructing a stream crossing structure, in which the structure created within the channel is as similar as possible to the natural channel in both physical structure and function, and which takes into account appropriate bed forms and streambed characteristics so that water depths and velocities within the crossing structure at a variety of flows are comparable with those found in the natural channel upstream and downstream of the stream crossing.

Env-Wt 902.21 “Temporary crossing” means a crossing that will:

- (a) Be used solely for forest management activities, normal agricultural operations, or trail activities, or a combination of such activities; and
- (b) Remain in place for less than 2 years after installation.

Env-Wt 902.22 “Protected species or habitat” means:

- (a) Any threatened wildlife species as defined in RSA 212-A:2, V, any endangered wildlife species as defined in RSA 212-A:2, IV, or any habitat of such species which is determined to be critical by the executive director of the NH department of fish and game (NHF&G) under RSA 212-A:9, III; and
- (b) Any protected plant species as defined in RSA 217-A:3, VIII, or any exemplary natural community as identified by the New Hampshire department of resources and economic development, division of forest and lands, natural heritage bureau (NHB).

Env-Wt 902.23 “Tier one stream crossing” means a crossing that meets the criteria specified in Env-Wt 904.02(a).

Env-Wt 902.24 “Tier 2 stream crossing” means a crossing that meets the criteria specified in Env-Wt 904.03(a).

Env-Wt 902.25 “Tier 3 stream crossing” means a crossing that meets the criteria specified in Env-Wt 904.04(a).

Env-Wt 902.26 “Trail activities” means activities necessary for public-access trail construction and management, including but not limited to cutting roads and pathways through forests, provided such activities are undertaken in compliance with RSA 482-A:3, XII(a) by conforming to the Best Management Practices for Erosion Control During Trail Maintenance and Construction published by the department of resources and economic development (Trail BMPs) and filing the required notice.

## PART Env-Wt 903 STREAM CROSSINGS: CLASSIFICATIONS AND APPLICATIONS

### Env-Wt 903.01 Classification of Stream Crossings and Stream Crossing Projects.

- (a) Stream crossings shall be classified as tier one, tier 2, or tier 3 based on the location of the project, as specified in Env-Wt 904.02(a), Env-Wt 904.03(a), and Env-Wt 904.04(a), respectively.
- (b) A stream crossing project shall be classified as minimum impact, minor impact, or major impact based on (e) through (g), below, regardless of the tier classification of the stream crossing included in the project.
- (c) The requirements for the design of a stream crossing and the information that must be submitted with the application shall be based on the tier classification of the crossing, regardless of whether the project is a minimum impact, minor impact, or major impact project, except that if a tier 3 stream crossing is downgraded to a tier 2 or tier one crossing pursuant to Env-Wt 904.04(b) or (c), the design and application submission requirements of the final classification shall apply.
- (d) The classification of a stream crossing project as minimum impact, minor impact, or major impact shall be used to determine the fee that must be submitted with the application and how the application is processed.
- (e) A project shall be classified as a minimum impact project if (f) and (g), below, do not apply, and the only stream crossing included in the project is:

- (1) A new tier one stream crossing that meets the criteria of Env-Wt 904.02(b);
  - (2) A repair or rehabilitation that is classified as a minimum impact project under Env-Wt 904.06(c); or
  - (3) A replacement that is classified as a minimum impact project under Env-Wt 904.07(c).
- (f) A project shall be classified as a minor impact project if (g), below, does not apply, and:
- (1) The only stream crossing included in the project is:
    - a. A new tier one stream crossing for which approval of an alternative design is being sought as specified in Env-Wt 904.02(c);
    - b. A new tier 2 stream crossing that meets the criteria of Env-Wt 904.03(b);
    - c. A replacement tier 2 stream crossing that does not meet the criteria of Env-Wt 904.06;
    - d. A repair or rehabilitation that is classified as a minor impact project under Env-Wt 904.06(d); or
    - e. A replacement that is classified as a minor project under Env-Wt 904.07(d); or
  - (2) Any of the criteria for a minor impact project specified in Env-Wt 303.03 are met.
- (g) A project shall be classified as a major impact project if:
- (1) The stream crossing is a new or replacement tier 3 crossing; or
  - (2) Any of the criteria for a major project specified in Env-Wt 303.02 are met, regardless of the tier classification of the stream crossing that is part of the project.

Env-Wt 903.02 Application Fees.

- (a) The application fee for a stream crossing project classified as minimum impact shall be as specified in RSA 482-A:3, I(c) for a minimum impact project.
- (b) The application fee for a any stream crossing project that does not qualify as a minimum impact project shall be calculated as specified in RSA 482-A:3, I(c) based upon the sum of the square feet of impacts to the banks and channel bottom and other associated jurisdictional areas.

Env-Wt 903.03 Information Required for a Stream Crossing Application.

- (a) In addition to the information required in Env-Wt 501.02, for all stream crossing projects the applicant shall submit the following:
  - (1) On the USGS map required by Env-Wt 501.02(a)(4), the approximate boundaries and size of the contributing watershed;
  - (2) Plans showing the following information:
    - a. The scale, north arrow, and at least 3 reference points outside of the construction disturbance area;
    - b. Clearing limits showing all work areas covered by special project requirements with notes;

- c. Structure location with inlet and outlet inverts;
  - d. Extension of channel excavation and filling;
  - e. Road locations, including road edges and centerline;
  - f. Channel work identified including bank erosion control features, grade control, and channel linings; and
  - g. Estimated drainage area at the crossing location;
- (3) Streambed details, with figures, which show the following:
- a. The distance from the top of the right bank to the top of the left bank;
  - b. Approximate elevations, spacing, diameters, and locations of rocks for steps, bankline, and other channel rocks for roughness;
  - c. Details for sediment retention structures, if any, within embedded structures; and
  - d. A visual estimate of dominant channel materials upstream, downstream, and if applicable, within the existing crossing;
- (4) Existing crossing metrics, including:
- a. Existing riparian zone, including the extent and type of existing vegetation surrounding or in the stream bank;
  - b. Existing crossing type and dimensions, including material, length, and dimensions; and
  - c. Existing tailwater control, including its location and materials, and pool configuration;
- (5) The dewatering system, as follows:
- a. Estimates of the maximum flow anticipated during construction, including any summer storm estimates;
  - b. Location, height, and width of the diversion dam;
  - c. Sump locations, including estimate of necessary flow and sump capacity;
  - d. Backwater prevention method; and
  - e. Sediment treatment plan with methods, release point, and extent;
- (6) Erosion and pollution controls, as follows:
- a. Any additional methods of controlling erosion;
  - b. A stormwater management plan, including but not limited to where to cover stockpiles and place straw bales;
  - c. Pollution control methods for pumps, fuel stations, and equipment storage;
- (7) Footings, including the following:
- a. Estimate of bearing capacity; and
  - b. Footing depth and width for bottomless arch or bridge; and

- (8) Structural details of the crossing, including the following:
  - a. Structural section, gauge or thickness, and material, minimum and maximum cover limits;
  - b. Structures, drawn to scale, on elevation view showing bed material location relative to structure, and special backfill zones; and
  - c. Structural excavation quantity and total excavation estimate.
- (b) In addition to the information required in Env-Wt 501.02 and (a), above, the applicant for any tier 3 - major impact stream crossing project shall provide the following additional information:
  - (1) Structure location including inlet and outlet inverts;
  - (2) Streambed details, with figures, which show the streambed simulation materials and its extent, depth and length within the crossing;
  - (3) Road locations, including road edges and centerline;
  - (4) Channel information for the design reference reach including bankfull width, bankfull depth, entrenchment ratio, sinuosity, flood prone width, a long profile that is 7-10 bankfull widths long with grade controls, pools and gradients shown, an appropriate reference reach cross section with channel details, reference reach pebble count, including a narrative explaining why the cross section is considered representative;
  - (5) Pebble count upstream, downstream, and if applicable, within the existing crossing; and
  - (6) The hydraulic calculation for the bypass pipe or channel size, length and gradient.

#### PART Env-Wt 904 DESIGN AND CONSTRUCTION OF STREAM CROSSINGS

Env-Wt 904.01 General Design Considerations. All stream crossings shall be designed and constructed so as to:

- (a) Not be a barrier to sediment transport;
- (b) Prevent the restriction of high flows and maintain existing low flows;
- (c) Not obstruct or otherwise substantially disrupt the movement of aquatic life indigenous to the waterbody beyond the actual duration of construction;
- (d) Not cause an increase in the frequency of flooding or overtopping of banks;
- (e) Preserve watercourse connectivity where it currently exists;
- (f) Restore watercourse connectivity where:
  - (1) Connectivity previously was disrupted as a result of human activity(ies); and
  - (2) Restoration of connectivity will benefit aquatic life upstream or downstream of the crossing, or both;
- (g) Not cause erosion, aggradation, or scouring upstream or downstream of the crossing; and
- (h) Not cause water quality degradation.

Env-Wt 904.02 Tier One Stream Crossings.

- (a) A tier one stream crossing shall be a crossing located on a watercourse where the contributing watershed is less than or equal to 200 acres.
- (b) Tier one stream crossings shall:
  - (1) Meet the general design considerations specified in Env-Wt 904.01;
  - (2) Be sized so as to accommodate the greater of:
    - a. The 50-year frequency flood; or
    - b. Applicable federal, state, or local requirements; and
  - (3) Be a span structure, pipe arch, open-bottom culvert, or closed-bottom culvert, with or without being embedded with stream simulation.
- (c) An applicant shall use a design that does not meet the criteria of (b)(1) or (2)a., above, only if a request for approval of the alternate design is submitted and approved as specified in Env-Wt 904.09. Any application requesting approval for an alternative design for a tier one stream crossing shall constitute an application for a minor impact project.
- (d) An existing legal crossing that would be classified as tier one under (a), above, may be repaired or rehabilitated pursuant to Env-Wt 904.06 or replaced in kind pursuant to Env-Wt 904.07.
- (e) Compensatory mitigation shall not be required for any tier one minimum impact project.
- (f) Construction involving in-stream work shall be limited to low flow conditions.
- (g) Crossings that require excavation in flowing water shall use best management practices, such as temporary by-pass pipes, culverts, or cofferdams, so as to maintain normal flows and prevent water quality degradation.

Env-Wt 904.03 Tier 2 Stream Crossings.

- (a) A tier 2 stream crossing shall be a crossing located on a watercourse where the contributing watershed is greater than 200 acres and less than 640 acres.
- (b) Subject to (c), below, any new tier 2 stream crossing and any replacement tier 2 stream crossing that does not meet the criteria specified for in-kind replacement in Env-Wt 904.07 shall be a span structure, pipe arch embedded with stream simulation, open-bottom culvert with stream simulation, or closed-bottom culvert embedded with stream simulation.
- (c) The applicant shall use an alternative design only if a request is submitted and approved as specified in Env-Wt 904.09.
- (d) An existing legal crossing that would be classified as tier 2 under (a), above, may be repaired or rehabilitated pursuant to Env-Wt 904.06 or replaced in kind pursuant to Env-Wt 904.07.
- (e) Compensatory mitigation shall not be required for:
  - (1) Any new tier 2 stream crossing that meets the requirements of this section and Env-Wt 904.05; or
  - (2) Any tier 2 stream crossing that is repaired or rehabilitated pursuant to Env-Wt 904.06 or replaced in kind pursuant to Env-Wt 904.07.

(f) Plans for a tier 2 stream crossing shall be stamped by a professional engineer who is licensed under RSA 310-A to practice in New Hampshire.

(g) Construction involving in-stream work shall be limited to low flow conditions.

(h) Crossings that require excavation in flowing water shall use best management practices, such as temporary by-pass pipes, culverts, or cofferdams, so as to maintain normal flows and prevent water quality degradation.

Env-Wt 904.04 Tier 3 Stream Crossings.

(a) Subject to (b), below, a tier 3 stream crossing shall be a crossing located:

(1) On a watercourse where the contributing watershed is 640 acres or greater;

(2) Within a designated river corridor;

(3) On a watercourse that is listed on the surface water assessment 305(b) report in effect at the time of application as not attaining surface water quality standards for aquatic life based on one or more of the following:

a. Benthic macroinvertebrate index of biological integrity;

b. Fish assemblage index of biological integrity;

c. Habitat assessment; or

d. Stream channel stability;

(4) Within a 100-year flood plain or fluvial erosion hazard zone;

(5) In a jurisdictional area having any protected species or habitat; or

(6) In or within 100 feet of a wetland that has been designated by a municipality as a prime wetland pursuant to RSA 482-A:15, unless a waiver has been granted pursuant to RSA 482-A:11, IV(b).

(b) The applicant for a project in which a stream crossing is categorized as tier 3 based solely on (a)(3) or (4), above, may request that the crossing be categorized as a tier one or tier 2 stream crossing, as applicable based on watershed size, if there are no impacts to the resource or the impacts to the resource are specifically mitigated in accordance with Env-Wt 800.

(c) If an applicant for a project in which a stream crossing is categorized as tier 3 based solely on (a)(5), above, wishes to have the crossing categorized as tier one or tier 2 based on watershed size, the applicant shall consult with the NHB if any protected plant species or habitat is impacted or the NHF&G if any protected wildlife species or habitat is impacted. The department shall downgrade the stream crossing to tier one or tier 2, with mitigation if necessary, if the NHB or NHF&G, as applicable, recommend such a downgrade.

(d) A tier 3 stream crossing shall be a span structure or an open-bottomed culvert with stream simulation, not a closed-bottom culvert or pipe arch.

(e) The applicant shall use an alternative design only if the request is submitted and approved as specified in Env-Wt 904.09.

(f) Compensatory mitigation shall not be required for:



- (1) Any new tier 3 stream crossing that is self-mitigating; or
- (2) Any replacement of a crossing that met all applicable requirements when originally installed but is in a location that results in the crossing being classified as tier 3 under these rules, provided the proposed stream crossing meets the requirements of Env-Wt 904.08.

(g) Plans for a tier 3 stream crossing shall be stamped by a professional engineer who is licensed under RSA 310-A to practice in New Hampshire.

(h) Construction involving in-stream work shall be limited to low flow conditions.

(i) Crossings that require excavation in flowing water shall use best management practices, such as temporary by-pass pipes, culverts, or cofferdams, so as to maintain normal flows and prevent water quality degradation.

Env-Wt 904.05 Design Criteria for Tier 2 and Tier 3 Stream Crossings. New tier 2 stream crossings, replacement tier 2 stream crossings that do not meet the requirements of Env-Wt 904.07, and new and replacement tier 3 stream crossings shall be designed and constructed:

(a) In accordance with the NH Stream Crossing Guidelines, University of New Hampshire, May 2009, which can be downloaded for free at [http://www.unh.edu/erg/stream\\_restoration/](http://www.unh.edu/erg/stream_restoration/);

(b) With the bed forms and streambed characteristics necessary to cause water depths and velocities within the crossing structure at a variety of flows to be comparable to those found in the natural channel upstream and downstream of the stream crossing;

(c) To provide a vegetated bank on both sides of the watercourse to allow for wildlife passage;

(d) To preserve the natural alignment and gradient of the stream channel, so as to accommodate natural flow regimes and the functioning of the natural floodplain;

(e) To accommodate the 100-year frequency flood, to ensure that:

- (1) There is no increase in flood stages on abutting properties; and
- (2) Flow and sediment transport characteristics will not be affected in a manner which could adversely affect channel stability;

(f) To simulate a natural stream channel; and

(g) So as not to alter sediment transport competence.

Env-Wt 904.06 Repair or Rehabilitation of Tier One or Tier 2 Existing Legal Stream Crossings.

(a) An existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) shall be repaired or rehabilitated pursuant to this section only if the crossing does not have a history of causing or contributing to flooding that damages the crossing or other human infrastructure.

(b) Repair or rehabilitation of a culvert or other closed-bottom stream crossing structure pursuant to this section may be accomplished by concrete repair, slip lining, cured-in-place lining, or concrete invert lining, or any combination thereof, except that slip lining shall not occur more than once.

(c) An existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) shall be repaired or rehabilitated as a minimum impact project only if the stream crossing as proposed to be repaired or rehabilitated will:

- (1) Meet the general criteria specified in Env-Wt 904.01;
- (2) Not diminish the hydraulic capacity of the crossing; and
- (3) Not diminish the capacity of the crossing to accommodate aquatic life passage.

(d) If the criteria of (c), above, cannot be met, an existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) shall be repaired or rehabilitated as a minor impact project if the stream crossing as proposed to be repaired or rehabilitated will:

- (1) Not adversely impact the stability of the stream banks or stream bed upstream or downstream of the crossing; and
- (2) Not cause an increase in the frequency of flooding or overtopping of banks.

Env-Wt 904.07 In-Kind Replacement of Tier One or Tier 2 Existing Legal Stream Crossings.

(a) If the routine roadway/railway maintenance exemption of Env-Wt 303.05(q) is not available, an existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) may be replaced pursuant to this section, provided that the existing crossing does not have a history of causing or contributing to flooding that damages the crossing or other human infrastructure.

(b) The replacement stream crossing shall be:

- (1) The same size and type as the existing stream crossing; or
- (2) An upgrade of the existing stream crossing, for example by replacing a closed-bottom culvert that did not have stream simulation with a span, or with a pipe arch or culvert with stream simulation.

(c) An existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) shall be replaced as a minimum impact project only if the stream crossing as proposed to be replaced will:

- (1) Meet the general criteria specified in Env-Wt 904.01;
- (2) Not diminish the hydraulic capacity of the crossing; and
- (3) Not diminish the capacity of the crossing to accommodate aquatic life passage.

(d) If the criteria of (c), above, cannot be met, an existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) shall be replaced as a minor impact project if the stream crossing as proposed to be replaced will:

- (1) Not adversely impact the stability of the stream banks or stream bed upstream or downstream of the crossing; and
- (2) Not cause an increase in the frequency of flooding or overtopping of banks.

Env-Wt 904.08 Replacing Tier 3 Existing Legal Stream Crossings.

(a) As part of an application for replacing an existing legal crossing that would be classified as a tier 3 stream crossing under Env-Wt 904.04(a), the applicant shall provide an assessment of the geomorphic compatibility of the existing stream crossing based on the NH Stream Crossing Guidelines, University of New Hampshire, May 2009, which can be downloaded for free at [http://www.unh.edu/erg/stream\\_restoration/](http://www.unh.edu/erg/stream_restoration/).

(b) A replacement tier 3 stream crossing shall comply with the specific design criteria in Env-Wt 904.05, unless a request for an alternative design is submitted and approved as specified in Env-Wt 904.09.

Env-Wt 904.09 Alternative Designs.

(a) If the applicant believes that installing the structure specified in the applicable rule is not practicable, as that term is defined in Env-Wt 101.69, the applicant may propose an alternative design in accordance with this section.

(b) To request approval of an alternative design, the applicant shall submit a written request to the department, accompanied by a technical report prepared by an environmental scientist or professional engineer that clearly explains how the proposed alternative meets the criteria for approval specified in (c) or (d), below, as applicable.

(c) The department shall approve an alternative design for a new tier 2 crossing, a replacement tier 2 crossing that does not meet the requirements of Env-Wt 904.07, or a new or replacement tier 3 crossing if:

- (1) The report submitted pursuant to (b), above, demonstrates that adhering to the stated requirements is not practicable;
- (2) The proposed alternative meets the specific design criteria specified in Env-Wt 904.05 to the maximum extent practicable; and
- (3) The alternative design meets the general design criteria specified in Env-Wt 904.01.

(d) The department shall approve an alternative design for a new tier one crossing or a replacement tier one crossing that does not meet the requirements of Env-Wt 904.07 if:

- (1) The report submitted pursuant to (b), above, demonstrates that adhering to the rules is not practicable; and
- (2) The alternative design meets the general design criteria specified in Env-Wt 904.01 to the maximum extent practicable.

(e) The department shall notify the applicant in writing of its decision on the request. If the request is denied, the notice shall specify the reason(s) for the denial. If the request is approved, the permit issued shall include such conditions as are needed to ensure that the project's impacts are minimized.

#### APPENDIX

Rule Section(s)	Statute(s) Implemented
Env-Wt 900	RSA 482-A:1 & 3; RSA 482-A:11